IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE D.S.R.VARMA**

**WRIT PETITION NO : 1690 of 2005**

Between:

1 G. Narender, S/o. Late G. Balakrishna,
Mahaboobnagar, R/o. Kollapur, Now at 10-51, Ramnagar Colony,
Nagarkurnool.
2 Gollakistagari Niranjan, S/o. Late G. Bala Krishna,
Kollapur, R/o. Novodaya Vidyanikethan, Kollapur, R/o. 3-23-47, Kollapur,

Mahaboobnagar District.
3 Smt. Gollakistagari Laxmidevamma, W/o. Late G. Balakrishna,
R/o. 3-23-47, Kollapur, Mahaboobnagar District.

**..... PETITIONERS**

AND

1 The Government of A.P., rep. by its Secretary, Legislative Affairs, &

Justice, Secretariat Buildings, Hyderabad.
2 The Director of Prosecutions, D.G.P. Office Complex, Hyderabad.
3 Sri V. Bala Buchaiah, S/o. Narsimlu,
Mahaboobnagar.
4 Sri Narsimulu, S/o. Somanna,
R/o. 1-10-113/4, Shah Sahabgutta, Mahaboobnagar.

**..... RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the G.O. Rt. No.1890 law, (L.A.&J Courts-A2) Department, dt. 5.11.2004 issued by the 1st respondent appointing the 3rd respondent as special Public Prosecutor to conduct the proceedings in S.C.No.489 of 2000 on the file of the I Addl. District & Sessions Judge Court, Mahaboobnagar, in crime No.36/2000 of Police Station, Nagarkurnool, Mahaboobnagar District as illegal, arbitrary; and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioners: MR.V.MANOHAR RAO**

**Counsel for the Respondents1 & 2: G.P. FOR HOME**

**Counsel for the Respondent No.4: Mr.M.Surender Rao**

**Counsel for the Respondent No.3: None appeared**

**The Court at the stage of admission made the following**

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**ORAL ORDER**:

Heard both sides.

2. The petitioners in this writ petition challenged the G.O.Rt.No.1890, Law (L.A.& J.Courts.A2) Department, dated
05-11-2004 issued by the first respondent appointing the third respondent as a Special Public Prosecutor to conduct the proceedings in S.C.No.489 of 2000 on the file of the I Additional District and Sessions Judge Court, Mahaboobnagar, in connection with the Crime No.36 of 2000 of Nagarkurnool Police Station, Mahaboobnagar.

3. It is the contention of the learned counsel for the petitioners that it is not open for the first respondent to appoint the third respondent as a Special Public Prosecutor, at the request of the *de facto* complainant, which is opposed to the principles laid down by the apex Court in ***Mukul Dalal v. UOI***.

4. A learned Judge of this Court in ***Devineni Seshagiri Rao v. Government of A.P.*** considered the whole gamut on this issue and observed thus:

> "The office of the Public Prosecutor is unique in its nature and status and it cannot be permitted to be controlled by, or slipped into the hands of private individuals. Request have certainly made by a complainant in a given case, for appointment of Special Public Prosecutor. However, it shall not be open to the complainant to name a person of his choice for such appointment. It is further observed that the question as to whether or not it is necessary to appoint a Special Public Prosecutor in a case and if so the person to be appointed as such shall be within the discretion and prerogative of the State. The State cannot surrender its discretion to the choice of an individual. The exercise, and the conclusion arrived at in this regard, are required to be evident from the order of appointment itself."

5. In the present case, the petitioners have been expressing certain apprehensions about the appointment of the third respondent. Of course, there is no clear material to substantiate these apprehensions. However, the learned counsel appearing for the fourth respondent-*de facto* complainant submits that, in fact, he did not name the third respondent as a Special Public Prosecutor and admittedly only upon the suggestion made by the Director of the Prosecutions, he proposed the name of the third respondent.

He further submits that he is not keen to have the third respondent only appointed as a Special Public Prosecutor and that he only made a request to the Government to appoint a Special Public Prosecutor.

6. Therefore, having regard to the facts and circumstances of the case and having regard to the submissions made by the learned counsel appearing for the fourth respondent and also taking into consideration the judgment rendered by the apex Court, (1 supra), the first respondent may consider the name of any other competent advocate/officer, other than the third respondent, as a Special Public Prosecutor to prosecute the case in S.C.No.489 of 2000 on the file of the I Additional District and Sessions Judge Court, Mahaboobnagar. This exercise shall be completed as expeditiously as possible, on a priority basis, preferably within four weeks from the date of receipt of a copy of this order.

7. In the result, the writ petition is allowed setting aside the impugned G.O. subject to the observations made above. However, there shall be no order as to costs.

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**D.S.R. VARMA, J**

28TH March, 2005

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ASSISTANT REGISTRAR

To

1. The Secretary, Government of A.P., Legislative Affairs, & Justice,

Secretariat, Hyderabad.
2 The Director of Prosecutions, D.G.P. Office Complex, Hyderabad.
3. Two CCs to G.P. for Home, High Court Buildings, Hyderabad (OUT).

4. Two CD copies

5. One CC to MR.SURENDER RAO, learned counsel for the

Respondent No.4.

6 The I Additional District & Sessions Judge, Mahaboobnagar.